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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 DEVIN WHITTIER,

9 Plaintiff,

10 v.

11 SEATTLE TUNNEL PARTNERS, *et al.*,

12 Defendants.  
13

NO. C17-0751RSL

ORDER DENYING MOTION FOR  
SANCTIONS

14 This matter comes before the Court on “Plaintiff’s Motion for Sanctions.” Dkt. # 126.  
15 Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court  
16 finds as follows:  
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18 On May 6, 2019, plaintiff filed a motion in limine seeking production of relevant portions  
19 of the “Inspector’s Daily Reports” which would either confirm or rebut Seattle Tunnel Partners’  
20 contention that there was a “hold point” on the project that should have prevented plaintiff and  
21 his crew from being in the elevator shaft on the day of the accident. Dkt. # 115. Plaintiff  
22 requested that if the Court declined to compel production or if the records no longer existed, it  
23 should impose a rebuttable presumption that the “hold point” had been removed and/or preclude  
24 Seattle Tunnel Partners from pursuing this defense. Dkt. # 115 at 6. Defendant immediately  
25 produced the “Inspector’s Daily Reports” from the relevant time frame.  
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1 Plaintiff has known of the “Inspector’s Daily Reports” since January 23, 2019, when  
2 defendant’s Rule 30(b)(6) designee testified that, as part of Seattle Tunnel Partners’ quality  
3 assurance process, its inspectors would have documented the lifting of a “Hold Point” in a daily  
4 inspection report. Dkt. # 127-1 at 41. Discovery closed on February 8, 2019, yet there is no  
5 indication that plaintiff made an informal request for production of the reports or notified  
6 defendant that he thought the reports should have been produced in response to one of his  
7 written discovery requests. Instead, plaintiff waited until the motion in limine deadline to seek  
8 production.  
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10 Despite the untimeliness of the request, defendant produced the documents. Plaintiff  
11 responded with this motion for sanctions, stating that he is still unable to discern whether the  
12 “hold point” was lifted or remained in place and arguing that the reports should have been  
13 produced with Seattle Tunnel Partners’ initial disclosures under Rule 26(a)(1), in response to a  
14 discovery request seeking documentation proving that the incident was caused by a third-party,  
15 and/or at the Rule 30(b)(6) deposition. Plaintiff seeks an order prohibiting defendant from  
16 pursuing its “hold point” defense and awarding monetary sanctions to reimburse plaintiff for the  
17 time and money he spent trying to investigate the defense. Defendant has provided explanations  
18 for the alleged discovery failures, noting that the reports do not support or prove its third-party  
19 defense, it never intended to rely on them in this litigation, and that the Rule 30(b)(6) deposition  
20 notice requested information regarding quality control - something the subcontractors perform --  
21 not the quality assurance review its inspectors perform. Dkt. # 131 at 9 and 11. Plaintiff made no  
22 reply to these arguments, and the Court accepts them as uncontested. Plaintiff has therefore  
23 failed to establish a violation of Rule 26, Rule 30(b)(6), or Rule 37.  
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1 For all of the foregoing reasons, plaintiff's request for sanctions is DENIED.

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3 Dated this 23rd day of August, 2019.

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5 Robert S. Lasnik  
6 United States District Judge  
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